IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 985 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SIRAJUDDIN SHAHBUDIN SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 985 of 2003

MR NISHITH P THAKKAR for Petitioner No. 1

MR. V.M.PANCHOLI, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 05/08/2004

ORAL JUDGEMENT

By filing this petition under Article 226 of the Constitution of India, petitioner seeks to challenge the order dated 30th March, 2002 rendered in Criminal

Revision Application No. 101 of 2001 by the learned Additional Sessions Judge Ahmedabad Rural, Navrangpura, by which, order dated 24.12.2001 passed below application for taking muddamal - Motorcycle Hero Honda bearing registration No. GJ-1-CM-7170 by the learned JMFC, Ahmedabad Rural, Navrangpura has been affirmed. By the said order learned Magistrate has refused to hand over the said muddamal to the petitioner on the grounds stated in the said order.

2. Having heard Mr.Nishith P Thakkar, learned advocate of the petitioner and Mr. V.M.Pancholi, learned APP appearing on behalf of respondent State of Gujarat and on having perusal of the averments made in the petition as well as both the orders which are impugned under this petition, it appears that the petitioner has committed offence of murder and in connection with the said offence he has used Motorcycle- Hero Honda bearing registration No. GJ-1-CM-7170. Therefore, during the course of investigation police has seized the said muddamal. On having perusal of the order passed by the learned Magistrate it could be seen that the said muddamal was sent to Forensic Science laboratory for chemical analysis. On having perusal of the order passed by the Revisional Court, it could be seen that, on having perusal of the FSL report which was made available to the learned Additional Sessions Judge, the learned Judge has observed in his judgement that there is a reason to believe that the said muddamal was used for commission of the offence of murder. It could also be seen that the muddamal which is used in causing murder is the subject of the evidence.

3. In aforesaid view of the matter, this Court also does not deem it expedient to grant the relief prayed for by the petitioner in this petition.

4. It is settled principle of law that concurrent finding of facts recorded by both the courts below cannot be assailed in a petition filed under Article 226 of the Constitution of India since the powers vested in Court under Article 226 of the Constitution of India is a supervisory jurisdiction. The High Court must confine itself to the correcting of error of jurisdiction committed by the courts below and it cannot assume suo motu jurisdiction of appellate court and correct every mistake assumed to have been committed by the courts below. It is a review of the decision making process and not the decision itself. The High Court cannot reappreciate preliminary or perceptive facts found by the

fact finding authority under the statute. The aforesaid proposition of law is laid down by the Apex court in the case of (i) Mohd. Yunus v. Mohd. Mustaqim & others, AIR 1984 SC 38, (ii) Khanna Improvement Trust v. Land Acquisition Tribunal and others (1995) 2 SCC 557 and (iii) H.B. Gandhi v. M/s. Gopinath (1992) Supp. 2 SCC 312 and (iv) State of Maharashtra v. Milind and others, (2000) 1 SCC 4.

5. For the foregoing reasons, petition fails and accordingly it is rejected. Rule is discharged.

(A.M.Kapadia,J)

Jayanti*